IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 684 of 2005
with
CRIMINAL MISC. APPLICATION No.7962 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GAUTAM DEVJIBHAI RATHOD - Applicant(s)
Versus
THE STATE OF GUJARAT - Respondent(s)

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Appearance :
MRS MADHUBEN SHARMA for Petitioner No(s).: 1.

PUBLIC PROSECUTOR for Respondent No(s).: 1.
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CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date : 26/07/2005

COMMON ORAL JUDGMENT

1.When the Criminal Misc. Application No.7962/2005 has come up for hearing, with the consent of the learned Counsel for the parties, the main Special Criminal

Application is taken up for final hearing. The only question which arises for consideration is that whether the transfer of Sessions Case No.99/2002 from the Court of Third Fast Track Court to another Fast Track Court was proper at the instance of the State through District Government Pleader.

2. It appears that on facts so far as the pendency of the Sessions Case No.99/2002 before the Third Fast Track Court is concerned, there is no dispute. It also appears that some of the witnesses were examined and thereafter at the stage of recalling of certain witnesses, the District Government Pleader, Bharuch has submitted an application dated 3.3.2005 praying to the learned Principal Sessions Judge, Bharuch for transfer of the case to another Court. The perusal of the application shows that the ground alleged for transfer is that non-bailable warrants were issued against the District Superintendent of Police, Valsad and other witnesses by the Court and it is stated in the application that as the period of five years has passed, due to some reasons if the witness is not in a position to come, the Court has issued non-bailable warrant against the witness, including the District Superintendent of Police, Valsad, even though it was not demanded by the prosecution and, therefore, it has

been stated in the application that there is a breach of the propriety by the Court with the witnesses and, therefore, it has been prayed for the transfer of the case. It appears that the learned Sessions Judge has passed the following order:

"Heard. The matter is to be transferred to the Court of ......(illegible)."

3. No reasons whatsoever are stated by the learned Sessions Judge for transfer of the matter, nor any attempt is made to call for the comment from the Court before whom the matter was pending. As such the exercise of the power by the learned Sessions Judge is without stating any reasons whatsoever and without considering the relevant material as none is referred to in the order. Further, merely because the coercive process is issued against some of the witnesses is hardly any ground for justifying the transfer of the case from one Sessions Court to another Sessions Court. It needs to be recorded that the Court of law with a view to enforce the presence of any witness may exercise the power. It is also true that in normal circumstances, the Court may first issue summons. Thereafter if the summons is not honoured after service, the Court may issue bailable warrant and if the same is also not respected the Court may also issue

non-bailable warrant. But all such aspects are procedural aspects and the learned Judge conducting the trial has to exercise the discretion, keeping in view the sound principles of judicial discipline. Merely because there is error in exercising judicial discretion of issuance of process against certain witnesses, the same cannot be a sufficient ground for transferring the case to another Court, more particularly when as observed earlier, no comments/remarks whatsoever were called for by the learned District and Sessions Judge before exercise of the power. Under the circumstances, the order passed by the District and Sessions Judge for transfer of the case cannot be maintained in the eye of law.

4. In view of the above, the order for transferring the case from the Court of Third Fast Track Court to another Fast Track Court is quashed and set aside. It is made clear that the present order shall not preclude the learned District and Sessions Judge from passing the administrative order for assigning various matters to different Courts by way of normal exercise administrative power for distribution of work.

5. The learned Counsel for the petitioner submitted that the petitioner is in jail and the proceedings of the Sessions Case are pending for a long time.

6. Hence, considering the facts and circumstances that the petitioner is an under-trial prisoner, due priority shall be given by the learned Fast Track Court before whom Sessions Case No.99/2002 is pending and the attempt shall be made to dispose of the trial as early as possible, preferably within a period of six months from the date of receipt of the writ of this Court.

7. The petition is allowed to the aforesaid extent. Rule partly made absolute.

8. In view of the order passed in the main Special Criminal Application, no orders are required to be passed in Criminal Misc. Application No.7962 of 2005 and hence the same shall stand disposed of accordingly.

26.7.2005 **(Jayant Patel, J.)**

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